

8 DEC 1975

OGC REVIEW COMPLETED

Mr. William E. Colby
Director of Central Intelligence
Washington, D.C. 20505

Dear Mr. Colby:

Your letter to me dated November 24, 1975 indicates that you have agreed with the Inspector General's findings that:

(1) There has been some grade escalation in this Agency, coincidental with reductions in force, not excessive, and that changes proposed by [] will correct the problem.

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(2) Overtime regulations and contracting practice are not illegal and will therefore be continued.

Since I do not agree with these findings I am sending you this letter.

The Inspector General's view is typical of the Agency senior staff view for 30 years -- to find only minor fault with anything, which can be corrected without controversy.

I disagree with this "tokenism" philosophy. When you find wrong, you should make a conscientious effort to correct it, not pretend you don't see it.

There has been excessive grade escalation in this Agency, and not as a result of reductions in force. Most of it was the result of intentional falsification of grade levels. [] and [] are not competent to judge such matters since they are not technically qualified to determine grade levels. Further, they are unwilling or unable to understand that there is anything wrong with the deliberate falsification of grade levels resulting in excessive salary payments. There is something wrong with this.

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The grade escalation is not something which can be resolved by vote or representations by Office of Personnel officials, with whom [] discussed it. Grade escalation is a question of fact, not opinion, and the opinions of the IG and the Director of Personnel (both interested parties -- interested in not finding it) have no merit. In the attached report I include a section specifying cases of deliberate violations of legitimate grade practices going back many years. I challenge anyone, in an objective forum, to claim that these actions are ethical or moral. In other agencies such actions could result in serious consequences to the responsible administrative officials.

The recommendations made by [] which have been substantially adopted, have not and cannot be expected to result in any correction of the present wrongs. As I indicated in my comments on his study nothing can be accomplished without external controls. But, of course, Agency officials do not want any correction.

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With regard to legality of the present overtime regulations and contract employment, I did not base my criticism primarily on legality. I criticized these practices on the ground that they were unethical and unprincipled. Nothing in your letter indicates concern with ethics or principles. If you stand for legality without regard to principle I am glad to know it. I believe you have most senior Agency officials behind you.

Sincerely,

[]

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Att

8 DEC 1975

175-7462/9

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT : Career Service and Career Service Grade Authorization System

1. Action Requested:

- a. The abolishment of the Career Service Grade Authorization system and related changes in the assignment and promotion system in the CIA.
- b. The review of supergrade and upper level positions.

2. Basic Data:a. Introduction

This paper was originally written to the Director of Personnel. The Deputy Director of Personnel for Plans and Control, however, felt the analysis was not sufficient, for reasons not clear to me. He was obviously reluctant to do anything with the paper. Therefore, I have decided to go into more detail and identify as many cases as I can recall of falsification of grades and abuse of authority. I have no ax to grind and my purpose is only to attempt to have the wrongs corrected.

b. Establishment of the System

The Career Service system in the CIA has been in existence since the middle 1950's. Its purpose was primarily to establish control over employees by field of work specialization, e.g. intelligence operations, administration, finance, personnel, etc. In 1958 a Flexible Table of Organization - Career Service Staffing Authorization system was superimposed on the Career Service system. The purpose of this new system was to make it possible to assign employees without formal establishment of positions and to promote employees without regard to the grades of the positions occupied provided that after promotion the total employees by Career Service at any grade did not exceed the total number of positions at that grade and above cumulatively.

By 1960, when the Inspector General surveyed the Career Service system and recommended reduction of the existing 26 services to five services, the system was entrenched and no change was made. In any case the IG survey was not directed toward the goal of any substantial change.

c. Results of Application

Initially the CSSA (later redesignated Career Service Grade Authorization (CSGA) system was applied to the Office of Communications and thereafter to the DDP and other components.

The system has been indirectly responsible for a major part of the grade escalation in the Agency since its adoption, since it has encouraged officials to think in terms of "grade availability" or "headroom" at any grade level rather than work assignments. It has permitted the continuing and substantial disregard of the basic principle of Federal employment expressed by Congress on numerous occasions since 1923 and included in Title 5 of the U.S. Code: "Equal pay for substantially equal work."

It is important to note that this principle is part of the philosophy which has been included in policy statements of the Agency since 1949. The principle, however, has not been followed in the Agency.

Agency management has believed and followed the "grade-in-the-man" principle in the interest of flexibility in assignments. This principle is similar to "featherbedding." It permits many who have exceeded their level of competence to continue drawing a salary frequently in excess of the value of their services for many years. It has failed to recognize the performance of individuals in many cases who have been under-slotted for years and on the other hand has recognized the "potential" of others who do not ever perform at the grade level to which promoted.

It has permitted Career Service boards to exercise an undue influence over the careers of individuals while the recommendations of supervisors who have a greater understanding of work performance have had little recognition.

It has led to the manipulation of grade levels over the objection of the position classification organization in order to accommodate the grade levels of individuals achieved through the Career Service board potential system.

d. Position Misallocations

A feature of the CSCA system has been the requirement for justifying promotions by use of a position grade structure theoretically based on job duties. In order to maintain a higher promotion rate in excess of that supported by normal attrition, various unethical or improper grade raising practices have been and are being used, as follows:

(1) In 1962 the Deputy Director for Support, Colonel L. K. White, ordered nearly 200 GS-15 positions identified as supergrades. The existing supergrades and GS-15's were ranked by the position classification component in order of difficulty and responsibility. The DDS then selected the GS-15's he wanted to be GS-16's and ordered their establishment. Since the supergrades were established without regard to their true level of responsibility I regard this as a clear abuse of authority. The Agency History indicates that OMB (BOB at the time) did not believe that the DCI could have approved the increase. Many of these supergrades were not then and are not now worth the grades.

X1A (2) [] the Director of Personnel, who wanted to upgrade the Deputy Director of Personnel for Special Programs to GS-17 and the Chief, Retirement Affairs Division to GS-16 in order to promote the incumbents, submitted recommendations to this effect to the Director, without evaluation by the Position Management and Compensation Division. The positions were approved although not worth the grades then, or now. Incumbents were then promoted.

(3) Fred Janney, the Director of Personnel, wanted three GS-17 Deputy Directors of Personnel, and so recommended, without concurrence by the Position Management and Compensation Division. They were approved. None of these positions are worth GS-17. For comparison, it should be noted that Directors of Personnel for major departments and agencies of the Federal Government, with staffs of one hundred thousand employees and more and responsibilities far in excess of the Agency Deputy Director of Personnel positions, are only GS-17.

X1 (4) [] as DDM&S ordered the preparation of a recommendation to the Director of Central Intelligence to secure the classification of the Director of Medical Services at EP-05. 25X1 This was done, although the Position Management and Compensation Division had previously submitted a memorandum to [] indicating EP-05 could not be justified. The position was not and is not worth EP-05.

(5) Jack Blake, as Director of Personnel ordered the upgrading of the Career Management Officer for the Office of Personnel from GS-14 to GS-15, although the position was not and is not worth over GS-13.

(6) A GS-17 employee, [] 25X1A unable to perform any longer at his level for various reasons, was assigned to a GS-14 job. He was not downgraded with pay retention as provided by Agency regulations. This practice is reserved generally for clericals, technicals, and those who have made enemies. The position was upgraded to GS-15 to make it more acceptable. When the employee finally retired, his position was not downgraded to its level of worth since by then it had become part of the CSGA. It was filled with another individual overgraded through the operation of the system.

X1A (7) The position of Chief, Control Division, Office of Personnel was upgraded to GS-15 in order to accommodate the promotion of [] without Personal Rank Assignment. Upon his retirement his job was not downgraded since it is now part of the CSGA. It was later used as justification for promoting another employee to GS-15.

(8) The position of Chief, Plans and Review Staff GS-15 was split into two jobs established as GS-15's in order to provide a slot (Review Staff) for [redacted] who was reassigned from Staff Personnel Division, and another slot (Plans Staff) for [redacted]. Neither position was or is worth GS-15, but upon retirement of the employees they continued as part of the CSGA. Present incumbents of these GS-14 jobs have been promoted to GS-16, presumably on the basis of their performance at GS-14. This is difficult to rationalize, but this is the established system.

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These cases multiplied many times in derogation of ethical principles if not law have produced a viewpoint in the Agency which has no conception of or respect for the worth of jobs. Officials believe that grades can be and should be whatever the Director of Personnel or higher authority says they should be. This gives a degree of omnipotence to high officials that has never been countenanced by law in this century. The result of this misuse of the grading authority at the higher levels has led to further misallocation farther down to maintain a logical organization structure. Numerous GS-14's and GS-13's are overgraded to close the gaps in the structure.

Efforts made to reduce some excessively high grades have been uniformly unsuccessful. The unrevealed purpose behind the proposed elimination or curtailment of the position survey program is to grant operating officials immunity from review of jobs with which they are satisfied and permit them to concentrate all their efforts on areas still below levels they want.

Statistics have been devised and presented to the Office of Management and Budget to show that there has been no substantial increase in average grade in recent years. The statistics are self-serving, gratuitous, and misleading. There was an increase in average position grade of 10.3 in FY70 to 10.47 in FY75, for an estimated salary cost [redacted]

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AT [redacted] The question, further, should be why there has been no reduction in average grade in recent years with reductions in ceilings. The reason has been that in any reductions components have held on to higher grades and upper level ceiling and positions with great tenacity. In some cases components have been permitted to keep upper level ceiling without even the pretence of positions existing, for use sometime in the future when wanted. The upper level ceiling should, according to regulations, be comprised of the total upper level positions on the Staffing Complements and any increases above that total should require the approval of the Director of Personnel and the Comptroller, according to Agency directives. But, in fact, excess upper level ceiling is still retained by some components and may be used without approval of the Director of Personnel or the Comptroller.

Approved For Release 2006/01/03 : CIA-RDP80B01086A000900110001-1

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For many years supergrade ceiling has remained at [] plus SPS ceiling of [] for a total of []. This ceiling was originally secured through falsification of grade levels and misuse of authority. It is retained in the same manner. Many of the supergrade positions now established were approved by exercise of administrative authority without any basis in duties or responsibilities and after evaluation at lower levels.

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SPS's are used in place of supergrades when considered necessary, in spite of regulations. In effect, they are treated as extra supergrade ceiling. At the time the SPS system was established, it was designed as a device to secure additional ceiling from OMB (BOB at the time).

d. Reason for Present Problems

Part of the reason for the present problems has been the reluctance and in some cases the determination of office heads not to have Personal Rank Assignments and the necessity they have felt they had for higher and still higher grades in order to accommodate a promotion rate not based on actual job headroom or work performance. Their understanding of what work is actually worth is limited. They think in terms of individuals and what they believe these individuals are worth, frequently completely unrelated to what these individuals do.

One official, speaking of a subordinate supervisor, expressed it in these words: "He was promoted to GS-15 because he worked so hard". The job of the supervisor was not, before or after promotion, worth a GS-15. Even Agency regulations do not support the view that the basis for promotion to any grade is hard work. It is, or should be, the level of work.

The reasons for the Career Service system are partly related to the desire of many officials to emulate the Foreign Service system. However, the Foreign Service system is not accepted even within the Department of State as the standard by which all other systems should be measured. The grades within the Foreign Service have not been maintained consistently with equitable grade practices for many years. Both the Macomber Committee (an internal State Department body) and the Civil Service Commission have found Foreign Service classification inexcusable.

In practice, the Career Service system in the Agency has been an instrument of inadequately regulated power. Individuals could be promoted at once and justified later by upgrading of the positions or eventual reassignment. Officials have always operated on the well-justified assumption that once they have a grade it will not be taken away from them by force. The position classification organization has only the authority to hold the line and in many cases not even that. Officials above the position classification organization claim and exercise unregulated and unaccountable authority to overrule. To assume, as has been done, that all these actions over a period of 25 years were without error, because some higher authority could order a grade raised or could raise the level himself,

is untenable. Yet this appears to be the general view. A corollary of this view is that after a number of years all of these wrongs somehow became right - they achieved tenure so to speak. Under this premise you can't ever roll anything back.

The law and ethical practice does not recognize such a principle anywhere. But the CIA has been a law unto itself.

e. External Policy

The Civil Service Commission is concerned with amending Executive Order 9830 on Federal Personnel Administration to specify: "The authority and accountability of the head of the department/agency, director of personnel and agency managers for a totally honest position management and classification system. The order should cite specific legal sanctions for willful violations."

3. Staff Position:

Detailed study does not reveal any justifiable basis for continuing the present system. However, since office heads and supervisors in most cases have benefited under the present system and know nothing else, they can only regard it as superior, and cannot be expected to submit willingly to change. The advice and comments of those who have not benefited from the system probably will never be solicited and probably would not be valid in most cases because of fear of reprisal.

With regard to Executive Order 9830, the Agency may wish to make the claim that it is exempt. Certainly it would have to be stated that position management and classification in the Agency have been far from honest since their inception in 1949 or earlier until today. In view of the extensive Agency practice of misallocation, there is no means by which the provisions of the Executive Order could be administered in the Agency without external control.

In order to correct the wrongs produced by the present system, the following principles should apply:

a. No one should be promoted to a grade level he is not performing at.

b. No one should be assigned to a higher grade position for longer than a nominal period of 60 days, without promotion.

c. No one should receive pay above his level of performance for an indefinite period while other employees, not so well thought of, have the letter of the law applied to them, i.e. downgrading with salary retention or without.

d. While Personal Rank Assignments above an employee's grade may continue to be necessary to accommodate some reassignments, after a maximum of two years in a PRA an employee should be downgraded with salary retention as provided by law and Agency regulation.

e. Agency officials who deliberately falsify position grades or direct the falsification of position grades through the misuse of authority and through disregard of competent advice or failure to solicit competent advice should be appropriately punished.

f. The Career Service board functions should be limited to those the boards are qualified to perform. Primarily, these are recommending assignments or reviewing proposed assignments. Once an employee is assigned to a position, the arbitrary determination of the board or the office head not to promote him is inconsistent with ethical practice.

g. The competitive promotion system should be revised to make it correspond to that recognized in general government practice. Competition should be for jobs, not for grades. No individual should be promoted against a position and grade occupied by someone else, which in effect is what can and frequently does happen now.

h. With regard to the proper grading of positions, particularly at higher levels, this can be accomplished only by individuals familiar with what exists elsewhere and with authority to act. The Civil Service Commission should be requested to detail a qualified officer or officers to review all present supergrade and upper level positions in comparison to those existing elsewhere. Such officer or officers should have authority to raise or lower positions through GS-15 without concurrence or agreement by any official other than the Director of Central Intelligence, and he should make recommendations on supergrades directly to the DCI.

4. Recommendation:

I recommend that you approve the principles defined in paragraph 3, a. through h. and order their implementation by appropriate directives.

[Redacted Signature Box]

Office of Personnel

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CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

Executive Registry

1980-1-1

175-7462/6

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Washington, D. C. 20505

You will recall from my letter to you of 19 September 1975 that your memorandum was sent to the Inspector General's Staff for further review. Their main findings are as follows:

a. There has been some escalation in average grade and pay structure coincidental with reductions in force, but it has not been excessive. In order to strengthen the Office of Personnel's role in managing our positions, [redacted] report makes useful suggestions for upgrading and expanding PMCD. Your position as stated in your 3 November 1975 comments of the [redacted] report have been noted. However, I believe the adoption of the [redacted] recommendations will improve and strengthen our procedures in the position management area, and that these can be effected without accepting the external controls you suggest.

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b. Your views on the overtime regulations have been given careful consideration. However, I believe the OGC study of 12 December 1974 indicates our policy is legal, and I propose to be guided by the OGC findings.

c. There is some confusion regarding the difference between contract employees and independent contractors, but the IG has found nothing in this realm which is illegal. I have directed the Office of Personnel to issue a notice clarifying further our contracting policies and I have requested them to make certain changes in their contracting procedures.

I wish to thank you for bringing these serious matters to my attention. While none of your allegations were completely substantiated, it is helpful for these important issues to be aired periodically. I am particularly grateful when senior employees like yourself take the time to raise questions in areas where they are acknowledged experts.

IG

W. E. Colby

W. E. Colby
Director

Distribution:

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1 - DCI, 1 - DDCI, 1 - IG Subject, 1 - IG Chrono, 1 - [redacted] Chrono

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INSPECTOR GENERAL
75 - 3931

7 NOV 1975

Executive Registry
75 - 7462/5

MEMORANDUM FOR: Director of Central Intelligence

FROM : Inspector General

SUBJECT : Allegations by [redacted] Concerning Administrative Practices in the CIA 25X1A

1. Action Requested: That you approve the recommendations in paragraph 11 and sign the attached letter to [redacted] mentioned in paragraph 12. 25X1A

2. Background: On 15 July 1975 [redacted], a senior Office of Personnel employee, forwarded to you a memorandum on administrative practices within the Agency (Attachment 1). [redacted] believed there were practices which were a violation of Federal laws and regulations or which were unconscionable. [redacted] allegations fall into three areas. Firstly, there has been a consistent upgrading of positions which has lead to severe grade creep within the Agency. Secondly, overtime regulations of the Agency are in violation of Federal law. Thirdly, independent contracting procedures in the Agency are illegal. 25X1A

3. On 19 August 1975 the Director of Personnel sent you a long and thorough study of the [redacted] allegations (Attachment 2). With the exception of [redacted] claims on the overtime regulation, the Office of Personnel position was that [redacted] allegations had no foundation. On 28 August 1975 the Deputy Director for Administration forwarded to you a memorandum suggesting you submit both [redacted] and the Director of Personnel's memoranda to the Inspector General for his advice and recommendations (Attachment 3). On 19 September 1975 [redacted] was informed that his memorandum was being studied by the Inspector General (Attachment 4). 25X1A

4. The Inspection Staff has undertaken an investigation of all three of the issues raised by [redacted] With regard to the problem of the Agency's grade structure, there has been some escalation. Grade creep during the past fiscal years can be tabulated as follows: 25X1A

Employees

Average Grade

Supergrades

--

25X1A SUBJECT: Allegations by [] Concerning
Administrative Practices in the CIA

The institution of the single ceiling concept accounts for the higher number of employees in FY 75. The Office of Personnel points out that the Agency has eliminated approximately [] positions during the period FY 68 through FY 75, but that there is a greater need for higher graded professional positions, which contributed to a gradual increase in average grade position. This is a phenomenon common to all agencies which are reducing their ceilings. Further, the average grade of Agency employees is not excessive when compared with other U. S. Government agencies. On

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[] the position distribution within the Agency reflect an inverse pyramid are incorrect.

25X1A 5. The key unit in controlling internal position grade structure, and to monitor and control grade creep, is the Office of Personnel's Position Management and Compensation Division (PMCD). In order to investigate the situation within PMCD, the Deputy Director for Administration appointed [] to complete a survey of that Division and to make recommendations for improving the Agency's record in the management and control of personnel positions. This study was completed 24 September 1975. It calls for specific steps which would increase the Office of Personnel's role and authority in auditing the Agency's manpower and its positions. It specifically argues for a more effective PMCD and recommends steps to improve PMCD's per-

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formance. [] report does not call for a decentralization of position control. It rather proposes a central control of positions by the Office of Personnel but a decentralized control of people by the individual components. On 3 November 1975 [] prepared a critical analysis of the [] report (Attachment 6). [] found the report unduly critical of past PMCD efforts. The report is a "whitewash of the good intentions of administrative officials when there is no real evidence of their good intentions."

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[] strongly believes that an appeal and review mechanism is useless without an external control organization such as the Civil Service Commission. Additionally, correction of grade creep cannot be accomplished without external controls.

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25X1A 6. [] strongly believes that the present overtime regulations [] which provide no compensation for the first 8 hours of overtime performed by GS 12-14 employees is illegal. [] views are well known on this subject, and on 6 June 1974 he prepared a memorandum putting forth his position (Attachment 1). [] opinion, however, is balanced by OGC 74-2338 dated 12 December 1974 entitled CIA Policy on Overtime Compensation (Attachment 5). This study shows that the Pay Act of 1945 does not apply to the Agency and that our overtime policy is legal.

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25X1A SUBJECT: Allegations by [] Concerning
Administrative Practices in the CIA

25X1A 7. [] feels that the independent contractor arrangements now being used by the Agency are illegal. He believes the limitation on the amount of compensation given rehired annuitants indicates the Agency still considers them employees. He claims the reason for use of independent contractor status is to avoid the requirement for deducting taxes and social security.

8. Staff Position: Regarding the problem of position control, the Inspection Staff believes the acceptance of the [] report will help you reduce personnel costs within the Agency as mentioned in your 28 May 1975 letter to OMB. The Staff believes the grade creep mentioned by Mr.

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25X1A [] has not been excessive or out of line with what is happening in other agencies, but that efforts should be made via the [] report recommendations to limit future creep.

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25X1A 9. The question of the legality of overtime regulations has had much study with [] firmly on one side of the problem and the General Counsel on the other. We agree with the Office of Personnel, which now
25X1A believes the OGC study should be followed.

10. The IG Staff investigation indicates that the basic allegations by [] concerning illegal use of contract status are incorrect. The 90 percent limitation for annuitants was devised to impress upon Congress our intention not to rehire large number of annuitants. In addition, each contract now written specifically calls for the contractor to pay Federal taxes under existing laws and regulations. However, the IG Staff investigation did point up some doubts about the distinction between the status of a contract employee and an independent contractor. There has been a tendency in the past for components to look to the independent contractor status in order to circumvent the ceiling problem. There has also been confusion in the minds of some independent contractors as to their social security liabilities.

11. Recommendations:

25X1A a. [] be thanked for bringing the position and grade structure problem to your attention. Notwithstanding []
25X1A views, he should be informed you believe an early implementation of the [] recommendations will be a useful first step in attacking this serious matter.

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25X1A b. In light of the OGC position outlined in their paper of December 1974, [] be informed the current overtime policy is legal and you intend to follow the OGC guidance.

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25X1A SUBJECT: Allegations by [] Concerning
Administrative Practices in the CIA

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c. The Office of Personnel, in conjunction with the OGC, should prepare Headquarters and Field notices specifying in greater detail than now exists in [] the precise difference between contract employees and independent contractors. All contracts with independent contractors should contain specific notice of social security liability. A sterile version of the paragraph in the contract outlining tax liabilities should be prepared and given to each independent contractor.

25X1A 12. A letter to [] is attached for your signature (Tab A).

[]

25X1A

Donald F. Chamberlain
Inspector General

Attachments:
As Stated

~~W. E. Colby~~

~~W. E. Colby~~

APPROVED: _____

DATE: _____

DISAPPROVED: _____

DATE: _____

24 NOV 1975

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CONFIDENTIAL

DD/A 75-5559

21 November 1975

MEMORANDUM FOR: Director of Central Intelligence

Sir:

1. On the matter of the allegations by [redacted] against the Agency position classification program, you asked for clarification as to whether the Government Accounting Office had agreed with the internal Office of General Counsel position that our overtime policy is legal.

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2. You will find attached a memorandum by [redacted] of 20 November 1975, which addresses this issue. As you will note, the alleged GAO position is drawn from a position paper of 28 January 1959 by the then General Counsel, Mr. Lawrence Houston.

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3. I would suggest we would now do as follows:

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a. You sign the proposed letter to [redacted]

b. You ask [redacted] at his earliest convenience, to make the Senate and House Select Committees aware of Mr. [redacted] allegations. That he additionally make them aware of the Inspector General's investigation and report and your position. I believe it better for [redacted] to raise this matter than members of the Review Staff.

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c. Mr. Janney and or myself stand ready to discuss this matter with Mr. [redacted] if he should so choose.

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d. I have instructed Mr. Janney to have an "expert witness" be immediately prepared to discuss this matter with members of the Staff of the Senate Select Committee or the House Select Committee.

/s/ John F. Blake
John F. Blake
Deputy Director
for
Administration

Atts:

Distribution:

Original - DCI
1 - ER
1 - D/OP

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OGC 75-4294
20 November 1975

25X1A MEMORANDUM FOR: [REDACTED] Deputy Director of Personnel

SUBJECT: Mr. Colby's Question Relating to GAO Position on
the Agency's Overtime Policy

25X1A REFERENCE: MR by [REDACTED] 12 Dec 74, OGC 74-2338, Subj:
CIA Policy on Overtime Compensation

25X1A 1. This is in response to your request to the undersigned to clarify the apparent inconsistency which exists in referent memorandum concerning GAO's position on the Agency's overtime policy. Specifically, at Paragraph VI, Subparagraph 3, Page 27, I stated: "A second point which emerges is that competent legal authorities within the Civil Service Commission and GAO apparently have shared our position." The reference is to the Agency's position on overtime and the so-called "eight-hour donation rule." At Paragraph IV, Subparagraph 3B, Pages 17 and 18, I quoted a 30 January 1964 memorandum by [REDACTED] a former attorney with the Office of General Counsel, to-wit:

I also discussed the applicability of the Pay Act to CIA with Mr. Pat Friend, General Counsel's Office.

OGC25X1

[REDACTED]

committing himself to an opinion either way, and suggested that if CIA wanted anything definite the question should be formally forwarded to GAO for an opinion.

This was an isolated, informal discussion between a middle level attorney in the Office of General Counsel and his counterpart in the Office of General Counsel at GAO.

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2. At Paragraph IV, Subparagraph 1, the last sentence, Page 11, I stated that the eight-hour donation rule had been "informally cleared with the General Counsel to the Comptroller General and with members of his staff." At Paragraph IV, Subparagraph 2D, Pages 13 and 14, I quoted the 28 January 1959 opinion of the CIA General Counsel, Mr. Houston, to the Deputy Director of Support, which discusses this clearance with the General Counsel of GAO and members of his staff:

The attached draft of a proposed regulation on overtime has been reviewed by this Office and discussed with the General Counsel to the Comptroller General. With his approval, it was further reviewed with members of his staff who were of the same opinion as we that there was no legal objection to the adoption of this proposal.

It was on the basis of this 1959 Houston memorandum that I made the concluding statement about GAO having apparently shared the Agency's position on its overtime policy, believing it (the memorandum) carried considerable more weight than [] 1964 memorandum of an informal conversation.

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3. I have attached copies of both Mr. Houston's and [] memoranda for your review. If I can be of any further assistance in clarifying this matter, please call me.

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[]
Assistant General Counsel

Att

CONFIDENTIAL

OGC 9-6159

Comptroller General

25X1A General Counsel - [redacted]

25X1A Dep. Gen. Counsel - [redacted]

25X1A Details discussed with staff:
Assoc. Gen. Counsel - [redacted]

25X1A Asst. Gen. Counsel [redacted]
Attorney - [redacted]

28 January 1959

MEMORANDUM FOR: Deputy Director (Support)

SUBJECT: Proposed Regulation on Overtime Compensation Policies

1. The attached draft of a proposed regulation on overtime has been reviewed by this Office and discussed with the General Counsel to the Comptroller General. With his approval, it was further reviewed with members of his staff who were of the same opinion as we that there was no legal objection to the adoption of this proposal.

2. We all feel that we might be subject to suit by employees under the overtime compensation provisions of the Federal Employees Pay Act Amendments of 1954. The outcome of such a suit is uncertain and would probably depend upon the facts in any one case. It is possible that a court would feel it illogical to pay overtime for hours in excess of 48 but not for hours between 40 and 48. It might raise the question of how we determined which of the hours worked were overtime for pay purposes and which were gratuitous. The proposal as a whole appears well designed to meet the needs of the Agency and to be in the general interest of good Government administration. Since there is no assurance that any suit will be filed or if filed that it would necessarily be successful, we do not feel that this consideration should stand in the way of implementing the proposed procedure.

LAWRENCE R. HOUSTON
General Counsel

Att-Subj ect Regulation

OGC: OEP: LRH: jeb

cc: Director of Personnel w/att

Comptroller w/att

OGC chrono OGC subject-P&A 9 OGC [redacted]

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④

30 January 1964

MEMORANDUM FOR THE RECORD

SUBJECT: Applicability to CIA of Federal Employees Pay Act of 1945--discussions with Civil Service and GAO

1. Recently, on an informal basis, I have discussed with Miss Trickett of the General Counsel's Office at the Civil Service Commission the Civil Service Regulation (FPM Supplement 990-1, Section 550.101(b)(8)) which exempts CIA from the provisions of the Civil Service Regulations issued pursuant to the Federal Employees Pay Act of 1945 (FPM Supplement 990-1, Sections 550.101 - 550.164). I inquired why Civil Service had exempted CIA from the regulation, and whether in light of the exempting regulation Civil Service felt CIA was exempt from the Pay Act.

2. After thoroughly researching the records at Civil Service, Miss Trickett advised me that they contain no comment whatsoever regarding the exemption for CIA from the Pay Act, which was first adopted in August 1950, nor was there any correspondence between CIA and Civil Service regarding the exemption at the time it was put into the regulation. It is her conclusion that the exemption was given without "conscious considerations" and that it was "a fluke, an accident." She commented that she did not believe the exemption could be legally justified, and that if the Commission were to review the matter the exemption would probably be removed from the regulations. She believes that despite the exemption in the regulations the Agency remains subject to the statute itself. If a dissatisfied employee were to sue the Agency in the Court of Claims for benefits not provided the employee but available to Government employees generally under the Pay Act,

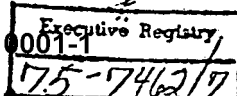
she did not feel a defense based on Section 8 of the CIA Act would prevail. It was her opinion that the Section 8 provision relating to "personal services" was intended to free the Agency from prohibitory statutes but not statutes providing entitlements for Government employees.

OGC 25X1

was cautious about committing himself to an opinion either way, and suggested that if CIA wanted anything definite the question should be formally forwarded to GAO for an opinion.

25X1A

Office of General Counsel



DD/A 75-5486

14 NOV 1975

Mr. William E. Colby
Director, Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Colby:

On July 15, 1975 I sent you a memorandum in which I informed you of administrative practices in the CIA which I regard as illegal or unethical. Among these practices was the excessive overgrading of many positions at higher levels.

I recommended the suspension of promotions to and within uppergrade and supergrade levels until the validity of these levels has been established.

While the Inspector General has been investigating the problem and has found no reason to dispute my facts or my conclusions, no action to correct present wrongs has yet been taken.

The present invalid levels of many supergrade positions have not been corrected in any cases.

Nevertheless, recently you promoted ☐ employees to the supergrade level. Many of the promotions were made against positions which are not worth the supergrade level and many of the employees are not performing supergrade work. The purpose of these promotions, I know, was in part to fill most of the supergrade ceiling and thus permit more forceful argument with the Office of Management and Budget that all the supergrade ceiling is needed. I do not regard this as a legitimate purpose of promotions.

While I believe you are a conscientious person and I respect your actions in recent investigations, I do not believe that there was any justification for many, if not most, of these recent promotion actions.

I believe now that nothing can be accomplished except by legislative action.

Therefore, I want you to know that I plan to submit my criticisms to Senator Frank Church, Representative Otis Pike, and Representative David Henderson, in the hope that they may be willing to take corrective action.

Yours very respectfully,



Office of Personnel

25X1A

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USE ONLY☒ CONFIDENTIAL☐ SECRET

STATINTL

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Allegations by
in the CIA

Concerning Administrative Practices

FROM:

Inspector General
2E24 Hqtrs. Bldg.

EXTENSION

NO.

DATE

STATINTL

TO: (Officer designation, room number, and
building)

DATE

RECEIVED

FORWARDED

OFFICER'S
INITIALSCOMMENTS (Number each comment to show from whom
to whom. Draw a line across column after each comment.)

1.

DCI
7E12 Hqtrs. Bldg.

11/11

APPROVAL

STATINTL

[] has indicated he
plans to take his complaint
to the HSC and SSC if his
views are not accepted.

GAO ?
Van D Rep -
Church / Pike

2.

3.

Inspector General
2E24 Hqtrs. Bldg.

4.

5.

6.

7.

8.

9.

10.

11.

12.

13.

14.

15.

19 SEP 1975

INSPECTOR GENERAL

75-3418

STATINTL

[redacted]
Central Intelligence Agency
Washington, D.C. 20505

STATINTL

I wish to acknowledge receipt of your 15 July 1975 memorandum to me concerning administrative practices in the CIA. I am also in receipt of positions from both the General Counsel and the Director of Personnel on matters raised in your communication. I have forwarded the entire matter to the Inspector General with a request that he undertake a review and study of the issues and present me with his findings and recommendations. Upon conclusion of that undertaking, I will be in further communication with you.

Sincerely,

W. E. Colby

W. E. Colby
Director

Distribution:

Orig - Addressee

- ✓ 1 - DCI
- 1 - DDCI
- 1 - DDA
- 1 - General Counsel
- 1 - D/Pers
- ✓ 1 - ER
- 1 - 16

O/DDA/JFBlake:der (27 Aug 75)

STATINTL

Rewritten: O/ES/[redacted]:pgh (2 Sept 75)

~~CONFIDENTIAL~~

Executive Registry

75-7462/3

DD/A 75-4014

28 AUG 1975

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT : Allegations by [redacted]
Concerning Administrative Practices in
the CIA

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25X1A

1. [redacted] a senior officer within the Office of Personnel, communicated with you on 15 July 1975 concerning administrative practices in the CIA. A copy of [redacted] memorandum is to be found at Attachment #1. It is my understanding that [redacted] memorandum was not submitted to you upon receipt, but has been held pending receipt of a position paper by the Office of Personnel on matters raised by [redacted]

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2. There is also attached for your information a memorandum addressed to you by the Director of Personnel responding to the issues raised by [redacted] (Attachment #2). With only one exception, I completely endorse the position taken on these allegations.

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25X1A

3. One of [redacted] allegations is:

"The overtime regulations of this Agency, established in 1962, are, I believe, in violation of Federal law."

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The Director of Personnel associates himself with the opinion on the legality of our overtime regulations as stated by Mr. [redacted]

4. The Office of General Counsel addressed itself to this matter on 12 December 1974. A copy of the OGC memorandum is at Attachment #3. OGC renders a legal position that the Agency is acting in consonance with the statute in devising and administering the overtime pay policy.

25X1

[redacted]

~~CONFIDENTIAL~~

CONFIDENTIAL

Approved For Release 2006/01/03 : CIA-RDP80B01086A000900110001-1

25X1A

5. I wish to address myself to two matters concerning [redacted] allegations and the reply by the Director of Personnel. I would urge you to very carefully consider any change in our overtime policy as it pertains, in certain selected cases, to the voluntary contribution of the first eight hours of overtime performed by professional employees. This policy has been in existence since 1962, and is universally accepted as a management device of this Agency. Withdrawal from this policy would cost well in excess of one million dollars per year, and would present management with many complex issues, not the least of which would be innumerable requests to authorize premium pay. The Office of General Counsel opinion states we are in a legally defensive position and, I believe, our advice on this matter must be taken from the Agency's attorneys and not its Personnel Officers.

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6. I do not wish to examine [redacted] motivations in submitting his memorandum of 15 July. Two events that were known to him on that date, however, may have been an influencing factor. Prior to that date, the Director of Personnel informed [redacted] he was being reassigned to other duties within the Office of Personnel, a decision which evoked very strong protest from [redacted] secondly, was aware on 15 July that I had directed the Office of Personnel to undertake a review of the position classification policies and procedures of this Agency in an endeavor to ascertain if experiences exist in both the governmental and private sectors unknown to us and which, if studied, could assist us in this admittedly complex and difficult field.

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7. I would recommend to you the following course of action:

a. Sign the attached piece of correspondence which I have prepared for your signature addressed to [redacted] and which acknowledges receipt of his memorandum to you and gives him indication of action taken to date. (This correspondence is at Attachment #4.)

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b. You submit the papers addressed to you by [redacted] and my memorandum to the Inspector General and ask him to provide you with his advice and recommendations, as well as a final communication from you to [redacted]

25X1A

CONFIDENTIAL

CONFIDENTIAL

Approved For Release 2006/01/03 : CIA-RDP80B01086A000900110001-1

I would ask of you that, if there should be any differences of opinion between the Inspector General and the Director of Personnel, I be given the opportunity to discuss the matter with you before you adopt your final position.

25X1A



John F. Blake
Deputy Director
for
Administration

4 Atts:

25X1A

1. [Redacted] Memo to DCI, dtd 15 July '75
2. D/OP Memo to DCI, dtd 19 August 1975
3. OGC Memo for Record, dtd 12 Dec. 1974
4. Proposed DCI Response to [Redacted]

25X1A

Distribution:

- Original & ✓ 1 - DCI w/Atts
1 - DDCI w/atts
1 - ER w/atts
1 - General Counsel w/atts
1 - D/Pers w/atts

CONFIDENTIAL

UNCLASSIFIED

CONFIDENTIAL

SECRET

EXECUTIVE SECRETARIAT

Routing Slip

TO:		ACTION	INFO	DATE	INITIAL
1	DCI				
2	DDCI				
3	S/MC				
4	DDS&T				
5	DDI				
6	DDA	✓			
7	DDO				
8	D/DCI/IC				
9	D/DCI/NID				
10	GC				
11	LC				
12	IG	✓			
13	Compt				
14	D/Pers				
15	D/S				
16	DTR				
17	Asst/DCI				
18	AO/DCI				
19					
20					
21					
22					

SUSPENSE _____ Date _____

Remarks:

To 6 & 12:

*For info + any appropriate
action.*

25X1A

3637 (1-75)